

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

**REPORT TO
CABINET**

11 JULY 2013

**REPORT OF
DIRECTOR OF
LAW AND
DEMOCRACY**

CABINET DECISION

Adult Services and Health – Lead Cabinet Member – Councillor Jim Beall

NEW HEALTH SCRUTINY REGULATIONS

1. Summary

This report provides an update on the new health scrutiny regulations following the introduction of the Health and Social Care Act 2012 and subsequent amendments to the regulations.

2. Recommendations

It is recommended that Cabinet notes the revised health scrutiny regulations, the production of draft guidance, and the implications for Stockton.

3. Reasons for the Recommendations/Decision(s)

To provide Cabinet with an overview of the revised health scrutiny regulations.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code).

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SUMMARY

This report provides an update on the new health scrutiny regulations following the introduction of the Health and Social Care Act 2012 and subsequent amendments to the regulations.

RECOMMENDATIONS

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DETAIL

Previous Position and Amendments to Legislation

1. The Health and Social Care Act 2001 required all local authorities with social services responsibilities to establish overview and scrutiny committees that had the power to scrutinise the operation of the health service in their area (Health Overview and Scrutiny Committees or 'HOSC'). This role is fulfilled by the Adult Service and Health Select Committee in the case of Stockton Council. Health scrutiny committees have the power to pro-actively review the provision of NHS services in their area, and seek to recommend ways of reducing health inequalities. The NHS has also been required to consult such scrutiny committees when it was considering 'substantial' variations to local services. HOSCs were given the power to refer such proposals to the Secretary of State for Health should they not agree with them, if they believed certain criteria had not been met.
2. Following a period of significant change in the NHS and the introduction of the Health and Social Care Act 2012, the Department of Health consulted on proposed changes to the regulations governing local authority health scrutiny in summer 2012. A summary of responses was subsequently published which included references to Stockton's response. New regulations have been published - The Local Authority (Public Health, Health and Wellbeing

boards and Health Scrutiny) Regulations 2013 - and associated guidance is being prepared, and has been made available in draft.

Revised Regulations

3. A key benefit of the new regulations is that the scope of health scrutiny has been widened and there is greater power to hold health providers to account; ie. all relevant health service providers delivering services commissioned by Clinical Commissioning Groups (CCGs), NHS England or local authorities are now covered by the scope of health scrutiny powers (eg. the ability to require attendance at a Council meeting). This positive change will facilitate a strategic approach to reviewing the quality of local services.
4. The key points of the new regulations are as follows:
 - a) The scope of health scrutiny powers now extends to both NHS and 'all relevant health service providers' – this means public, private or voluntary organisations that deliver services when commissioned by a CCG, NHS England, or local authorities themselves in relation to public health;
 - b) The power to undertake health scrutiny is now conferred on a Council as a whole. This can be discharged through establishment of a HOSC or through other arrangements.
 - c) The power to make referrals to the Secretary of State is conferred on a Council as a whole. The power of referrals may be delegated to a HOSC or joint committee by Council but not to any other health scrutiny arrangement that may be set up.
 - d) Consultations on substantial variations must be led by NHS commissioners (eg. a CCG), whether the proposals come from commissioners or providers originally.
 - e) When proposals for substantial variations cover more than one LA area, a joint committee must be formed by those LAs that are consulted. It is only the joint committee that has the right to be consulted and to require NHS attendance at meetings on the matter. However the joint committee itself does not have the power to refer a matter to the Secretary of State unless each Council involved has delegated its power to do so to it.
 - f) According to draft guidance, those LAs choosing not to be involved in such a joint committee (ie. by not considering it a substantial matter) forfeit their right to be consulted on the matter and the ability to make a referral to the Secretary of State.
 - g) The NHS must publish timescales that set out by when it will decide on which of the options for service change it will implement. The local authority must publish timescales that set out by when it will make a

decision as to whether to refer a matter to the Secretary of State, and subsequently by when it intends to make that referral.

- h) Reasonable steps must be taken by the NHS and local authorities to achieve a local resolution to disputes over service changes
 - i) Any referrals to the Secretary of State must be evidenced and include an explanation as to how the local authority has considered the effect of the proposal on the sustainability or otherwise of the local health service (eg. regarding quality, safety and financial issues), and an explanation of any steps taken to reach agreement with the consulting body
 - j) Normal health scrutiny functions will not apply when either a Trust Special Administrator or a Health Administrator is appointed to a provider of NHS services, when such a provider has become unsustainable.
5. There is an expectation that NHS England (through the relevant Area Team primarily) would be involved either by health scrutiny or the local CCG in order to assist with the local resolution of any disputes and potential referrals (unless NHS England was itself the commissioner proposing a particular change).
6. A summary of the revised legal powers and duties relating to health scrutiny is as follows:

Powers of local authorities

Local authorities may:

- a) review any matter relating to the planning, provision and operation of health services in their area;
- b) request information from NHS bodies and relevant health service providers;
- c) require attendance of NHS staff and members of relevant health service providers at scrutiny meetings;
- d) make reports and recommendations to NHS bodies, relevant health service providers and the local authority, and expect a response where one is requested within 28 days;
- e) respond to consultations by NHS bodies and relevant health service providers on matters of substantial variations or developments to health services;
- f) refer contested service changes to the Secretary of State on specific grounds. They must provide robust evidence in support of this and publish clear timescales within which the referral will be made;
- g) co-opt representatives onto their health scrutiny arrangements;
- h) delegate health scrutiny powers to another local authority, or to a joint committee of a number of local authorities;
- i) delegate health scrutiny powers to a Health Overview and Scrutiny Committee (HOSC), where one is retained;

- j) delegate some health scrutiny functions where a HOSC has not been retained in favour of an alternative mechanism;
- k) form joint scrutiny arrangements with other local authorities. This is mandatory in relation to proposals for substantial service change.

Duties of NHS bodies and relevant health service providers

NHS bodies and relevant health service providers must:

- a) provide information requested by local authorities, subject to certain exemptions;
 - b) attend before local authority scrutiny meetings to answer questions, subject to exemptions;
 - c) on request, respond to reports and recommendations made by local authorities within 28 days of the request being made;
 - d) consult the local authority (including joint committees) on proposals for substantial variations or developments to health services;
 - e) publish timescales for consulting on and implementing substantial variations or developments to services.
7. In terms of structures there is no requirement to amend Stockton's current arrangements following these changes. As the draft guidance makes clear, health scrutiny functions are non-executive functions of the local authority (where an authority operates Executive arrangements).
8. The draft statutory guidance highlights the role of health scrutiny in the new health 'system' and post-Francis Inquiry era. The function should provide an ongoing overview of local health services including an emphasis on monitoring quality, in-depth outcome focused reviews of key issues, and a mechanism for testing new proposals to ensure that they remain 'grounded' and address local concerns.
9. This report outlines the revised duties and powers. A separate report has been produced in relation to an improved approach to monitoring the quality of local health and care provision in more practical terms.

FINANCIAL IMPLICATIONS

10. There are no specific financial implications associated with this report.

LEGAL IMPLICATIONS

11. The powers and duties in relation to the operation of health scrutiny are outlined in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. Associated statutory guidance is being developed by the Department of Health.

RISK ASSESSMENT

12. This report on the revised Health Scrutiny Regulations is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

13. This report is relevant to the Healthier Communities and Adults theme.

EQUALITIES IMPACT ASSESSMENT

14. An Equalities Impact Assessment has not been developed as the report relates to the further development of the scrutiny function that has already been subject to an EIA.

CONSULTATION INCLUDING WARD/COUNCILLORS

15. This report outlines the new statutory position following the publication of the 2013 regulations. During summer 2012, Stockton Council responded to the Government's consultation on changes to the regulations, and this was signed off by the Cabinet Member for Adult Services and Health, following consultation with senior officers, Adult Services and Health Select Committee, and the shadow Health and Wellbeing Board.
16. The new position has also been reported to Executive Scrutiny Committee, and Adult Services and Health Select Committee.

Head of Democratic Services

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Education related?

No

Background Papers

None

Ward Councillors

Not ward specific

Property

There are no property implications